Dr Leela Ratos & Ors v Anthony Ratos s/o Domingos Ratos & Ors

HIGH COURT (KUALA LUMPUR) — PETITION NO D5-26-5-1996
KAMALANATHAN RATNAM JC
16 DECEMBER 1996

Civil Procedure *— Contempt of court — Civil contempt by counsel — Client's continued absence during trial, causing several adjournments — Counsel alleged that client was not able to attend due to medical reasons — Conflicting statement explaining absence of client by counsel — Whether on the facts, counsel had intentionally calculated to disrupt court proceedings by manoeuvring an adjournment of client's case — Whether on the facts, counsel was guilty of contempt ex facie*

Civil Procedure *— Contempt of court — Contravention of a prohibitory injunction — Injunction granted by court to restrain contemnor from interfering with the affairs of a company — Contemnor and its servants/agents caused filing of winding-up petition of company, causing bank account of company to be frozen — Contemnor also negotiated with third parties for further loans for the company — Whether on the facts, contemnor had acted contrary to terms of injunction — Whether on the facts, contemnor had committed contempt of court*

The petitioners moved the High Court seeking to commit the first, second and third contemnors to prison pursuant to O 52 r 3(1) of the Rules of the High Court b1980 in that they disobeyed an injunction ('the injunction'). The injunction restrained the first contemnor and his servants and agents from interfering in the affairs of four companies ('the fourth to seventh respondents'). The petitioners adduced evidence that the first contemnor acted contrary to the terms of the injunction in a number of respects, including causing the third contemnor, a solicitor, to file a winding-up petition against the fourth respondent company which resulted in its bank accounts being frozen, and causing the second contemnor to go to a bank to discuss further loans for the extension of the properties of the fifth respondent company. During the course of the hearing on 10 July 1996, the first contemnor failed to attend court and the third contemnor, who was acting for the first contemnor, explained that the first contemnor was ill and had chest pains. The hearing was adjourned until 15 July and then again, until 22 July. On that day, the third contemnor explained to the court the first contemnor's continued absence, stating that his client had been admitted to hospital and that he first knew of this on the previous day ('Sunday'). This conflicted with the statement of the opposing counsel, who said that the third contemnor had informed him on the previous Friday that the first contemnor would be admitted to hospital and that the case would not proceed. This gave rise to a further issue, namely whether the third contemnor was guilty of contempt *ex facie curiae.*

Held, finding the first, second and third contemnors guilty of contempt as charged and the third contemnor guilty of contempt *ex facie*:

(1) On the facts, it was clear that the first contemnor did indeed meddle with the affairs of the fourth respondent. It was noteworthy that to the very end, the first contemnor had been unrepentant. The easing of the passing of the contempt proceedings and especially at the sentencing stage, depended on the conduct of the contemnor. His remorse and repentance must be factors that the court ought to take into account. In this case, there was no apology from the first contemnor for his various breaches of the injunction. Therefore, it was necessary for the court to impose a sufficiently deterrent sentence that would equate to a purging of his contempt.

It was also clear that the second contemnor aided and abetted the first contemnor in breaching the injunction. Taking into consideration the second contemnor's open apology to the court and the fact that he was a licensed company secretary, a fine of RM3,000 in default a week's imprisonment in respect of the charges against him would be justified.

On the facts, it was also clear that the third contemnor was guilty as charged. Accordingly, the third contemnor was fined RM5,000 in default of a week's imprisonment (see pp 738E–F, 739I and 740A–B).

(2) The third contemnor was guilty of contempt *ex facie* for failing to give the court a satisfactory explanation as to his client's absence. The conduct of counsel or a party ought not to be odious or wicked or calculated to demean the dignity and standing of the court. This included acts or words which tended to show a deliberate attempt to mislead the court, or to interrupt court proceedings or to disrupt it by manoeuvring an adjournment. Here, the third contemnor knew on Friday that his client would not be attending the court on Monday, but said in court that he only knew of this on Sunday. The conduct of the third contemnor was intentionally calculated to disrupt court proceedings by manoeuvring an adjournment.

Where a person had been convicted of a civil contempt, the court could not entertain an application for stay of sentencing pending an appeal against the finding of contempt until he had purged his contempt. The act of deliberately misleading the court, committed by a senior practitioner such as the third contemnor, must be dealt with so as to reflect the seriousness of the offence and as a deterrence. A fine of RM2,000 to RM5,000 was not reflective of the gravity of the offence. Therefore, the third contemnor was sentenced to one day's imprisonment and a fine of RM50,000 in default of six months (see pp 734D–F and 735A–C); *Morris & Ors v The Crown Office* [1970] 1 All ER 1079, *Balogh v Crown Court at St Albans* [1974] 2 All ER 283, *Trustees of Leong San Tong Khoo Kongsi (Penang) Registered & Ors v SM Idris & Anor and another application* [1990] 1 MLJ 273, *Lakshminarayanan v Marimuthu* [1993] 1 MLJ 277 and *Wee Choo Keong v MBf Holdings Bhd & Anor and another appeal* [1993] 2 MLJ 217 followed.

[Bahasa Malaysia summary

Pempetisyen-pempetisyen memohon kepada Mahkamah Tinggi meminta supaya penghina pertama, kedua dan ketiga dihukum penjara menurut A 52 k 3(1) Kaedah-Kaedah Mahkamah Tinggi 1980 kerana mereka telah mengingkari suatu injunksi ('injunksi tersebut'). Injunksi tersebut menahan penghina pertama dan kakitangan dan ejennya daripada mencampur tangan dalam urusan empat buah syarikat ('penentang-penentang keempat hingga ketujuh'). Pempetisyen-pempetisyen mengemukakan keterangan bahawa penghina pertama telah bertindak bertentangan dengan terma injunksi tersebut dari beberapa segi, termasuk menyebabkan penghina ketiga, seorang peguamcara, memfailkan suatu petisyen penggulungan terhadap syarikat penentang keempat yang mengakibatkan pembekuan akaun banknya, dan menyebabkan penghina kedua berjumpa dengan sebuah bank untuk membincang pinjaman tambahan bagi membesarkan harta syarikat penentang kelima. Sewaktu perjalanan pembicaraan pada 10 Julai 1996, penghina pertama telah gagal hadir di mahkamah dan penghina ketiga, yang bertindak untuk penghina pertama, menjelaskan bahawa penghina pertama tidak sihat dan mengalami sakit dada. Pembicaraan ditangguhkan sehingga 15 Julai dan sekali lagi, sehingga 22 Julai. Pada hari itu, penghina ketiga menjelaskan ketidakhadiran berterusan penghina pertama kepada mahkamah, dengan menyatakan kliennya telah dimasukkan ke hospital dan bahawa beliau tahu akan perkara ini buat kali pertama pada hari sebelum ini ('hari Ahad'). Ini bercanggahan dengan pernyataan peguam yang menentang, yang mengatakan bahawa penghina ketiga telah memberitahunya pada hari Jumaat lepas bahawa penghina pertama akan dimasukkan ke hospital dan bahawa kes tidak akan dapat diteruskan. Ini menimbulkan isu yang selanjutnya, yakni sama ada penghina ketiga adalah bersalah atas penghinaan *ex facie curiae.*

Diputuskan, dengan mendapati penghina pertama, kedua dan ketiga bersalah atas penghinaan seperti yang dituduh dan penghina ketiga bersalah atas penghinaan *ex facie*:

(1) Atas fakta, adalah jelas bahawa penghina pertama memang telah campur tangan dalam urusan penentang keempat. Patut diberi perhatian bahawa hingga kesudahannya, penghina pertama tidak menyesal. Kelancaran perjalanan prosiding penghinaan dan terutamanya di takat penghukuman, bergantung pada kelakuan penghina. Penyesalan mestilah merupakan faktor yang harus diambil kira oleh mahkamah. Dalam kes ini, tiada permintaan maaf dari penghina pertama atas pelbagai pelanggaran injunksi tersebut. Oleh itu, adalah perlu untuk mahkamah mengenakan hukuman pencegahan yang mencukupi yang sama seperti membersihkan penghinaannya.

Adalah juga jelas bahawa penghina kedua telah membantu dan bersubahat dengan penghina pertama dalam memungkir

injunksi tersebut. Dengan mengambil kira permintaan maaf terbuka penghina kedua kepada mahkamah dan fakta bahawa dia adalah seorang setiausaha syarikat yang berlesen, denda sebanyak RM3,000 jika ingkar pemenjaraan selama seminggu berkaitan dengan pertuduhan terhadapnya adalah mempunyai justifikasi.

Atas fakta, adalah juga jelas bahawa penghina ketiga bersalah seperti yang dipertuduhkan. Lantaran itu, penghina ketiga didenda RM5,000 jika ingkar pemenjaraan selama seminggu (lihat ms 738E–F, 739I dan 740A–B).

(2) Penghina ketiga adalah bersalah atas penghinaan *ex facie* kerana gagal memberikan penjelasan yang memuaskan kepada mahkamah berhubung dengan ketidakhadiran klien. Kelakuan peguam atau sesuatu pihak tidak patut menjelekkan atau berniat jahat atau dijangka untuk merendahkan maruah dan pendirian mahkamah. Ini termasuk perbuatan atau perkataan-perkatan yang mungkin akan menunjukkan percubaan yang disengajakan mengelirukan mahkamah, atau untuk mengganggu prosiding mahkamah atau untuk menggendalakannya dengan mengatur penangguhan. Di sini, penghina ketiga tahu pada hari Jumaat bahawa kliennya tidak akan menghadiri mahkamah pada hari Isnin, tetapi berkata di mahkamah bahawa beliau hanya tahu akan hal ini pada hari Ahad. Kelakuan penghina ketiga sengaja dijangka untuk mengganggu prosiding mahkamah dengan mengatur suatu penangguhan.

Di mana seseorang disabitkan atas penghinaan sivil, mahkamah tidak boleh melayan permohonan untuk penggantungan penghukuman sementara menunggu penyelesaian rayuan terhadap pendapat penghinaan sehingga dia telah membersihkan penghinaannya. Perbuatan sengaja mengelirukan mahkamah, yang dilakukan oleh seorang pengamal kanan seperti penghina ketiga, mestilah ditangani supaya dapat memberi gambaran tentang keseriusan kesalahan dan sebagai suatu pencegahan. Denda sebanyak RM2,000 hingga RM5,000 tidak membayangkan keseriusan kesalahan. Oleh yang demikian, penghina dihukum pemenjaraan selama sehari dan denda sebanyak RM50,000 jika ingkar enam bulan (lihat ms 734D–F dan 735A–C); *Morris & Ors v The Crown Office* [1970] 1 All ER 1079, *Balogh v Crown Court at St Albans* [1974] 2 All ER 283, *Trustees of Leong San Tong Khoo Kongsi (Penang) Registered & Ors v SM Idris & Anor and another application* [1990] 1 MLJ 273, *Lakshminarayanan v Marimuthu* [1993] 1 MLJ 277 dan *Wee Choo Keong v MBf Holdings Bhd & Anor and another appeal* [1993] 2 MLJ 217 diikut.]

Notes

For cases on contempt of court, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 788–837.

Cases referred to

Balogh v Crown Court at St Albans [1974] 3 All ER 283 (folld)
Bramblevale Ltd, Re [1970] 1 Ch 128 (refd)
Clarke & Ors v Chadburn & Ors [1985] 1 All ER 211 (refd)
Comet Products UK Ltd v Hawkex Plastics Ltd & Anor [1971] 2 QB 67 (refd)
Coulson v Disborough [1894] 2 QBD 316 (refd)
Drewry v Thacker (1819) 36 ER 963 (refd)
Hadkinson v Hadkinson [1952] 2 All ER 567 (refd)
Hartecon JV Sdn Bhd & Anor v Hartela Contractors Ltd [1996] 2 MLJ 57 (refd)
Hubbard v Woodfield (1913) 57 Sol Jo 729 (refd)
Lakshminarayanan v Marimuthu [1993] 1 MLJ 277 (folld)
Messrs Hisham, Sobri & Kadir v Kedah Utara Development Sdn Bhd & Anor [1988] 2 MLJ 239 (refd)
Morris & Ors v The Crown Office [1970] 1 All ER 1079 (folld)
Partington v Booth (1817) 36 ER 57 (refd)
Pembinaan KSY Sdn Bhd v Lian Seng Properties Sdn Bhd [1991] 1 MLJ 100 (refd)
Seaward v Paterson [1897] 1 Ch 545 (refd)
Supply of Ready Mixed Concrete, Re [1991] 3 WLR 709 (refd)
Tan Lay Soon v Kam Mah Teatre Sdn Bhd (Malayan United Finance Bhd, Intervener) [1992] 2 MLJ 434 (refd)
TO Thomas v Asia Fishing Industry Pte Ltd [1977] 1 MLJ 151 (refd)
Thomas Francis Allen v William Cridge Flood & Anor [1898] AC 1 (refd)
Trustees of Leong San Tong Khoo Kongsi (Penang) Registered & Ors v SM Idris & Anor and another application [1990] 1 MLJ 273 (folld)
Agreement of the Mileage Conference Group of the Tyre Manufacturers' Conference Ltd, Re [1966] 2 All ER 849 (refd)
Wee Choo Keong v MBf Holdings Bhd & Anor and another appeal [1993] 2 MLJ 217; [1995] 3 MLJ 549 (folld)

Legislation referred to

Companies Act 1965 ss 181, 223
Companies (Winding Up) Rules 1972 r 24
Rules of the High Court 1980 O 52 rr 3(1), 4

Saraswathy Devi with *RS Sodhi* (*N Saraswathy Devi*) for the petitioners/applicants.

Raja Aziz Addruse with *GK Ganesan* (*Ganesen Ros Rokiah & Co*) for the first contemnor.

M Kayveas (*Blanche Kayveas & Co*) for the second contemnor.

Kam Woon Wah and *RR Sethu* (*Murthi & Partners*) for the third contemnor.

Cur Adv Vult

Kamalanathan Ratnam JC: On 9 July 1996, the petitioners moved this court by way of motion (encl 73) to commit to prison one Anthony Ratos s/o Domingos Ratos, Philips P Gomez and MS Murthi, a lawyer ('the first, second and third contemnors'), pursuant to O 52 r 3(1) of the Rules of the High Court 1980 ('the RHC'). The orders sought against each of the contemnors respectively were as follows:

(1) That Anthony Ratos s/o Domingos Ratos be committed to prison for his contempt in disobeying the injunction order dated 23 February 1996 and 23 May 1996 as follows:

(i) on 27 May 1996 Anthony Ratos s/o Domingos Ratos did cause the ambulance of the eighth respondent to be parked in the ambulance parking bay of the fourth respondent company;

(ii) on 29 May 1996 at about 4pm, Anthony Ratos s/o Domingos Ratos did go to the reception counter of the fourth respondent company to distribute invitations to the first and second petitioners and to the specialist consultants of the fourth respondent company;

(iii) on 11 May 1996 and 17 June 1996, Anthony Ratos s/o Domingos Ratos did cause to be advertised to sell 'new Javanese teak furniture' on the fifth floor, Room 507 of the fourth respondent company and laid out the furniture throughout the fifth floor of the fourth respondent company;

(iv) on 18 June 1996, Anthony Ratos s/o Domingos Ratos caused Messrs Murthi & Partners of No 9B, Jalan Stesyen, 41000 Klang, Selangor Darul Ehsan to file a winding-up petition against the fourth respondent company in the High Court of Malaya at Kuala Lumpur under Companies Winding Up No Dl–28–216–96 ('the winding-up petition');

(v) on 21 June 1996 Anthony Ratos s/o Domingos Ratos did cause his solicitors Messrs Murthi & Partners to give notice of the winding-up petition to the fourth respondent's bankers, namely Chung Khiaw Bank (M) Bhd, Jalan Pudu Branch and The Standard Chartered Bank (M) Bhd, Jalan Pasar Branch and caused the fourth respondent's current account with the banks to be frozen;

(vi) on 22 June 1996, Anthony Ratos s/o Domingos Ratos caused the winding-up petition to be advertised in The Star newspapers and in The New Straits Times;

(vii) on 17 April 1996, Anthony Ratos s/o Domingos Ratos did go and meet Mr Ngeow Foo Yoke ('NFY'), ie the branch manager of Public Bank (M) Bhd to, inter alia, discuss applications for further loans for the further extension of the present properties of the fifth respondent company;

(2) That Philips P Gomez be committed to prison for his contempt in aiding and assisting Anthony Ratos s/o Domingos Ratos to disobey the order dated 23 February 1996 by:

(i) going to the office of the fourth respondent company on 28 March 1996 to meet its personnel manager, Mr Teh Chin Lai, on the

instructions of Anthony Ratos s/o Domingos Ratos to demand for rental from the fourth respondent;

(ii) by aiding and assisting Anthony Ratos s/o Domingos Ratos to attend a meeting on 17 April 1996 with the branch manager of Public Bank (M) Bhd, NFY, to discuss applications for further loans for the further extension of the present properties of the fifth respondent company.

These acts complained of against Philips P Gomez were done by Philips P Gomez notwithstanding the injunction order dated 23 February 1996 made in this petition of which Philips P Gomez had notice.

(3) That MS Murthi be committed to prison for his contempt in aiding and assisting Anthony Ratos s/o Domingos Ratos to disobey the injunction order dated 23 May 1996 by taking active steps in the preparation, filing, service and advertisement of the petition for winding-up in the High Court of Malaya at Kuala Lumpur under Companies Winding-Up No D1–28–216–96 dated 18 June 1996 notwithstanding the injunction order dated 23 May 1996 made in this petition of which MS Murthi had notice;

(4) That such orders be made as may seem just to the honourable court for their several contempts upon the grounds set forth in the copy of statement served herewith used on the application for leave to issue this notice of motion;

(5) That the costs of this application and all costs incidental thereto inclusive of any cost arising in relation to any execution of any order this honourable court may make hereto be taxed by the senior assistant registrar and be paid by Anthony Ratos s/o Domingos Ratos, Philips P Gomez and MS Murthi to the petitioners/applicants forthwith.

In support of encl 73, the first petitioner affirmed an affidavit (encl 72) both on her behalf and on behalf of all the petitioners.

Case for the applicants

The applicants averred that on 31 January 1996 they had filed a petition in this action and that on 23 February 1996 this court had granted an injunction partly by consent against the first respondent, inter alia:

(i) restraining him, his servants and agents from interfering with the affairs of the fourth, fifth, sixth and seventh respondent company and from entering and remaining on the following premises, namely the whole of the premises of the fourth respondent company excluding the first respondent's room on the fifth floor at No 415–427 Jalan Pudu, 55100 Kuala Lumpur, the whole of the fifth respondent's premises, the whole of the sixth respondent's premises excluding the first respondent's personal office and the whole of the seventh respondent's premises at No 413, Jalan Pudu, 55100 Kuala Lumpur and from holding himself out as representing the fourth, fifth, sixth and seventh respondent in any manner whatsoever and that the first Respondent is given permission to enter and remain in his personal room at the 5th floor of the fourth and fifth respondent at No 415–427, Jalan Pudu, 55100 Kuala Lumpur and his personal office at the sixth respondent's premises at No 413, Jalan Pudu, 55100 Kuala Lumpur on his undertaking not to interfere or contact the petitioners in any manner whatsoever;

A (ii) restraining the first respondent from making any representation that the eighth respondent is a branch of the fourth respondent or is connected with the fourth respondent in any manner whatsoever;

(iii) restraining the first respondent from communicating with the staff and medical consultants of the fourth respondent company.

B After hearing arguments on the merits, this court on 23 May 1996 confirmed the injunction granted on 23 February 1996. It was contended by the applicants that at all material times, the first contemnor had notice of both the injunction orders dated 23 February 1996 and 23 May 1996.

It was the averment of the applicants that contrary to the terms of the C injunctive order dated 23 May 1996, the first contemnor did, on 27 May 1996 cause the ambulance of the eighth respondent to be parked in the ambulance parking bay of the fourth respondent. Photographs to this effect were annexed to the affidavit. Further and in defiance of the same order dated 23 May 1996, it was averred that the first contemnor did on 29 May 1996 at about 4pm go to the reception counter of the fourth D respondent to distribute invitations to the first and second petitioners and to the specialist consultants of the fourth respondent. A copy of a statutory declaration from the receptionist to this effect and a copy of the petitioners' solicitors' letter complaining of this fact and addressed to the first contemnor, were annexed to the affidavit. It was averred that soon thereafter E the first contemnor called off the proposed launching of the ambulance service. On 17 June 1996, the first contemnor caused to be advertised to sell new Javanese teak furniture on the fifth floor, Room 507 of the fourth respondent company. It was contended that outsiders had come to the fifth floor of the fourth respondent company to view the furniture which was laid throughout the fifth floor in a show room style. A copy of the F newspaper advertisement and photographs showing this were annexed to the affidavit. On 18 June 1996, the first contemnor caused his new solicitors, Murthi and Partners, to file a winding-up petition against the fourth respondent company. The petition was served on the fourth respondent on 21 June 1994 at 4.10pm and advertised in two newspapers, namely The G Star and in The New Straits Times on 22 June 1996 thereby preventing the fourth respondent from applying to the court for an injunction restraining the publication of the petition. Further, the first contemnor through his solicitors gave notice of the petition to Chung Khiaw Bank (M) Bhd and Standard Chartered Bank (M) Bhd and caused the bank accounts of the fourth respondent company to be frozen immediately. It was the contention H of the applicants that the petition for winding-up against the fourth respondent had been filed by the first respondent as a means of bringing about a sinister and collateral purpose of freezing the fourth respondent's bank accounts thereby enabling the first contemnor to interfere with the affairs of the fourth respondent. It was contended further that this was I done in order to coerce the petitioners applicants to withdraw the petition filed against the first contemnor in this action. It was averred that the first contemnor had no grounds to file the winding up petition and that in order to circumvent the terms of the injunction dated 23 May 1996, and in order to interfere with the affairs of the fourth respondent, the first contemnor

had proceeded to file this petition for winding-up. In breach of the injunctive order dated 23 February 1996, the first contemnor assisted and aided by the second contemnor went, on 17 April 1996, to Public Bank Bhd and met one of its bank managers, NFY, and discussed further loan applications for the extension of the present properties of the fifth respondent. A

The second contemnor's committal was sought on the premise that he aided and assisted the first contemnor to breach the terms of the injunctive order dated 23 February 1996 and that at all material times he had notice of the said order and further that on 28 March 1996, the second contemnor went to the office of the fourth respondent and met its personnel manager, one Teh Chin Lai ('TCL') on the instructions of the first contemnor and thereby the second contemnor had assisted the first contemnor to interfere in the affairs of the fourth respondent. The said TCL had filed an affidavit dated 1 April 1996 and a corrective affidavit dated 17 April 1996 to this effect. It was further contended that on 17 April 1996, the second contemnor assisted and aided the first contemnor to attend a meeting with the branch manager of Public Bank Bhd, namely NFY, to discuss matters prohibited by the injunctive orders dated 23 February 1996. B C D

The third contemnor's committal was sought on the basis that he aided and assisted the first contemnor by taking active steps in preparing and filing the petition for winding-up on 18 June 1996 which petition was filed in breach of the injunction dated 23 May 1996 and which was served on the fourth respondent on 21 June 1996 at 4.10pm and advertised in the respective newspapers on 22 June 1996. E

On 9 July 1996, when encl 73 came up for hearing before me, Datin Saraswathy Devi on behalf of the petitioners, referred me to encl 72 which was the affidavit in support of the motion and asked for an order in terms of the motion. However, in respect of the second contemnor, since the service was short by one day, I was asked to adjourn proceedings. The third contemnor who acted both for himself and as counsel for the first and second contemnors, in respect of encl 73, asked for another date in respect of the second contemnor. In the circumstances, I adjourned the motion in respect of the second contemnor to 12 July 1996. F G

In reply to the first complaint of parking the ambulance at the parking bay of the fourth respondent, Mr Murthi referred me to the affidavit of Anthony Ratos (encl 76). His reply was two fold in that, firstly, he did not know that the van was parked at the parking bay of the fourth respondent because the person who had earlier driven the ambulance had parked it there without informing him. Secondly, he averred that the moment he realized where the ambulance was parked, he took steps to remove the van. He had also averred that the area where the ambulance was parked was a public place and had been previously surrendered to the Dewan Bandaraya Kuala Lumpur ('DBKL'). In the circumstances, he contended that that area of land was public road reserve. In respect of the order dated 23 May 1996 which prohibited him from entering and remaining in the entire premises of the fourth respondent, and as he had not done so H I

A by merely parking at a designated bay, he could not therefore have breached the order.

In respect of the second charge that he had breached the order by going up to the reception counter of the fourth respondent, the first contemnor averred that since he was allowed by the same order to live in
B his allotted room at the fifth floor of the same building, he had in fact gone to the reception counter to collect his mail. In the circumstances, it was submitted by Mr Murthi that his client had not breached the injunctive order.

With regard to the third charge that he had advertised and laid out
C new Javanese teak furniture on the fifth floor, Room 507 of the fourth respondent's premises, it was submitted that the property in question was that of the fifth respondent and not the fourth respondent and that the first contemnor had obtained the permission of the fifth respondent's directors to use the area near his suite. In the circumstances, it was argued that there was no breach. When it came to ground (4) which was the charge of the first
D contemnor meeting NFY at Public Bank Bhd and discussing further loan applications for the extension of the present properties of the fifth respondent, in the course of his reply, Mr Murthi referred me to encl 76 wherein the first contemnor had denied the applicants' allegation. He said: 'I did not go to the bank to discusse any loan extensions for the fifth respondent'. He
E alleged that he met NFY and presented his ambulance project paper wherein he was applying for a loan of RM240,000. Having averred this, he went on to annex exh A6 which he termed the original copy of the letter from the Public Bank dated 19 April 1996 addressed to the fifth respondent. I reproduce herewith the contents of the said exh A6:

F Our ref: Sec Dept/NFY/LFY/lfy

19 April 1996

Confidential

Biopower Sdn Bhd
413 Jalan Pudu
G 55100 Kuala Lumpur By fax/mail

Attn: Mr Philips P Gomez (Managing Director)

Dear Sir,

Re: (1) Your application for loan facility of RM5m to be secured by
H properties presently occupied by City Specialist Centre Sdn Bhd

(2) Your application for further loans for the further extension for the present properties

We thank you for your visit and discussion between our Mr Ngeow, branch manager and Miss Loong, credit officer-in-charge and your directors, Philips
I Gomez and Mr John on 17 April 1996 regarding the above matter.

We will consider your application on receipt from you the various details requested by us in order for us to proceed with the evaluation of the projects.

Your early response to our request for the following will be much appreciated:

(1) Final accounts for the past 3 years;

(2) Latest valuation report from our panel of valuers.

We thank you for your past support given to us.

We assure you of our best services at all times.

Thank you.

Yours truly
for *Public Bank Bhd*

Sgd
Ngeow Foo Yoke
(Branch Manager)

At this stage, it is very important that I also reproduce the same letter allegedly written by the same NFY and also dated 19 April 1996 and also addressed to the fifth respondent:

19 April 1996

Private & Confidential
Biopower Sdn Bhd
413 Jalan Pudu
55100 Kuala Lumpur By fax/mail

Attn: Mr Philips P Gomez

Dear Sir

Re: (1) Your application for loan facility of RM5m to be secured by properties presently occupied by Dr Leela Medical Centre Sdn Bhd

(2) Your application for further loans for the further extension of the present properties

We thank you for the visit and discussion between our Mr Ngeow, branch manager and Miss Loong, credit officer-in-charge and your directors, Mr Anthony Ratos, Philips Gomez and Mr John on 17 April 1996 regarding the above matter.

We will consider your application on receipt from you the various details requested by us in order for us to proceed with the evaluation of the projects.

Your early response to our request for the following will be much appreciated:

(1) Final Accounts for the past 3 years;

(2) Latest Valuation Report from our panel of valuers.

We thank you and Mr Anthony Ratos for your past support given to us.

We assure you of our best service at all times.

Yours truly
for Public Bank Bhd

Sgd
Ngeow Foo Yoke
(Branch Manager)

This letter was earlier exhibited by the applicants in their encl 72 as exh M. The contents of both the letters were in reference to the loan application by the fifth respondent and was dated 19 April 1996, that is, well after the said two injunctive orders.

In exh M, NFY had clearly made reference to the visit of both the first and second contemnors to his office to discuss this loan.

In exh A6, the name of Anthony Ratos was significantly absent.

Since both letters were identical in all aspects except for the significant omission of the first contemnor's name in exh A6, I decided to exercise my discretion, in the interest of justice and to call NFY to clarify the omission. In any event, neither party raised any objections to the court using its own discretion to call NFY to clarify. Further, when court resumed in the afternoon, NFY was ready to clarify on oath. Mr Murthi, after receiving the court's consent, then proceeded to question NFY who admitted that he signed both the letters marked as exhs A6 and M on 19 April 1996. It is relevant to record verbatim the questions and answers relating to these two letters:

Mr Murthi

...

See A6. Witness is asked to read aloud, the first paragraph.

Q: What was the matter that was discussed?

A: They discussed some banking facilities for the further extension of the City Specialist Centre Sdn Bhd and other loans to borrow RM100,000 for the Day Care Specialist Clinic Sdn Bhd.

Q: Were these gentlemen discussing the loans as stated in the title to the letters?

A: Yes.

Q: Who discussed the Day Care Centre loan?

A: Three gentlemen met me to discuss that loan.

Q: Were the loans collectively discussed or individually discussed?

A: They were individually discussed.

Read first para of exh M.

Q: Which letter did you send first?

A: I sent 'M' first.

Q: It is significantly different from letter A6. Why did you send the second letter?

A: It was sent at the request of Anthony Ratos.

Q: Can you give any explanation for the difference in these letters?

A: Mr Anthony Ratos called up by phone and said that his name cannot be in the letter.

Q: What did Anthony Ratos discuss regarding the loans?

A: Both the loans were discussed by Anthony Ratos. A

Q: Explain why you agreed to send the second letter.

A: Because Anthony Ratos said his name cannot be in that letter.

Mr Sodhi

Q: See 'M'. You agree that both the matters stated in the title to the letter marked 'M' were discussed by Mr Anthony Ratos. B

A: Yes.

Q: And this was done in the presence of Mr Philips P Gomez?

A: Yes.

In the course of his evidence, it became evident that the first contemnor C had made an acknowledgement by way of an endorsement on the cover of an envelope. NFY explained that this endorsement was to the effect that the first contemnor could exchange M, which had been written earlier, with A6. Since the said cover was marked as 'ID1' only for identification and since NFY had clearly stated that the first contemnor had made the D endorsement, I ruled at that stage that the first contemnor ought to identify the document marked 'ID1'. Initially, Mr Murthi objected to the first contemnor giving evidence on the basis that he was not a compellable witness as he was facing a charge of contempt. When I pointed out to Mr Murthi that Mr Ratos was to be called only to identify the exhibit ID1, E Mr Murthi asked to examine the exhibit. Mr Murthi then objected to the witness taking the stand to identify the exhibit. Since he refused to take the stand after examining the exhibit and in order to prevent the invocation of adverse inference, I exercised my discretion and overruled the objection and directed Mr Ratos to take the stand only for purposes of identifying the exhibit. He was specifically directed by me that he need not make any F other statement. Mr Ratos then proceeded to inform the court that he wished to tender an explanation. On my request whether he wished to consult counsel and since he wanted to, I adjourned proceedings to enable the witness to consult with Mr Murthi. On resumption, Mr Murthi surprised the court by saying that his client wanted to give evidence as to what G transpired at the bank and only that. At my request, Mr Murthi assured the court that he had advised Mr Ratos that he was not obliged to give evidence. I had in mind *Comet Products UK Ltd v Hawkex Plastics Ltd & Anor* [1971] 2 QB 67.

In that case of a passing off action, the plaintiffs obtained an interim H injunction restraining the defendants from passing off their products as the plaintiffs'. Before the trial of the action, the plaintiffs alleged that the defendants were guilty of contempt of court for disobeying the injunction and applied for the committal of the second defendant to prison for his contempt. Affidavits were filed on behalf of each side and were read at the hearing of the application. The trial judge made an order allowing the I cross-examination of the defendant upon his affidavit which had been read by counsel for the plaintiffs. In allowing the appeal, it was held that since an application to commit for contempt had a quasi-criminal aspect and the proposed cross-examination would be likely to cover broad issues in the

A action, as a matter of discretion, the cross-examination ought not to be allowed.

In the instant case, Mr Anthony Ratos was called only to identify or deny a document. He was not called to testify on his behalf. He was warned against it. He elected to testify, but only wanted to restrict his B testimony. Mr Sodhi objected to this. The request of Mr Anthony Ratos was, to my mind, unacceptable. If Mr Ratos wished to give evidence on his own behalf and on his own volition, he ought not to be allowed to give selective evidence. Before I made my ruling, I again enquired of Mr Murthi and he assured me that he had advised his client accordingly. Even at this stage, he was given a choice to retract his willingness to testify.

C I therefore exercised my discretion and ruled that since Mr Ratos had elected to give evidence, I would allow for cross-examination and that the cross-examination would not be restricted to the witness's choice of evidence. As soon as I had made this ruling, Mr Murthi announced that Mr Ratos wanted to give evidence on everything. In answer to Mr Murthi's D question, Mr Ratos identified ID1 (now 'D1') as being his second company profile which was necessary for a loan application for the ambulance he was importing from Australia. The gist of his evidence was that the acknowledgement on ID1 was not in respect of the exchange of the two letters, A6 and M, as narrated by NFY, but that it related to his agreeing to change the company profile with that of the original company profile E with the ambulance photograph in it. He contended that the original was given to NFY when he met him in the office with the other two directors. He maintained that D1 was given to NFY on 19 April 1996 whereas the original which he had intended to exchange on 19 April 1996 was given to NFY on 17 April 1996 which was the date of the meeting. When told by F Mr Murthi that according to NFY the acknowledgement on D1 was in relation to exhs M and A6, he maintained that they were two different subjects, in that they were actually company profiles. In response to Mr Murthi's question, 'Are you saying that Mr Ngeow was incorrect that this is evidence of exchange of letters and not company profile?', the witness answered 'Yes'. As it was then 4.15pm, I adjourned the hearing to G the next day.

On 10 July 1996, when I resumed hearing in open court, Mr Murthi informed me that his client, Mr Anthony Ratos had informed him of chest pain that morning and that he wanted to be admitted to hospital. I adjourned hearing and directed that I was to be informed by Mr Murthi H when the first contemnor was discharged so that I could fix the continued hearing of the contempt proceedings. With regard to the proceedings against the second and third contemnors, since the case against them was one of aiding and abetting, I adjourned the same to coincide with the first contemnor's hearing. On 15 July 1996, when the case was fixed for continued hearing, Mr Murthi tendered a letter to the effect that his client I was ill and gave an undertaking to the court that he would obtain a medical certificate from his client. I then adjourned hearing to 22 July 1996 with a directive that Mr Murthi was to forward to the court by 20 July 1996 either a medical certificate or a report stating the condition of his client and whether he was fit to attend court.

On 22 July 1996, I was told that except for the applicants' counsel, none of the contemnors nor their counsel, Mr Murthi, was present and no reason was given for their absence. I therefore stood the matter down. At 11.27am, I sat to hear the matter. At this point of time a counsel, Mr N Balachandran informed me that he was informed by Mr MS Murthi on Friday, 19 July 1996 at about 12 noon that the day's proceedings would be stood down to 11am and that at that stage the matter would be adjourned. It was on that understanding that he had agreed to appear in court before me. He was informed by Mr MS Murthi that one of the parties would not be attending court on 22 July 1996 and that the hearing would be adjourned.

At this stage at 11.35am, Mr Murthi entered the court with an apology and informed me that his case in the Federal Court had finished at 11.18am. He further said that his client, namely Anthony Ratos had been admitted to hospital on Saturday with a complaint of transmission of pain at the back.

Since Mr Murthi addressed the court directly, I asked him when he knew that Mr Anthony Ratos was going to be admitted to hospital. Mr Murthi replied that he didn't know specifically when Mr Anthony Ratos was going to be admitted, but that he knew that his client was complaining from the 16th. Mr Ratos had contacted him on Sunday and informed him of his admission and that was the first time he had known of his admission. If his client was going to be admitted, he knew the matter was going to be adjourned. He then contacted Mr N Balachandran and told him that the fifth respondent was going to engage him. He had told Mr Balachandran that he would be in the Federal Court and that Mr Ratos might be admitted and that in that event to stand down the matter for him and further if Mr Ratos was admitted, the matter would not go on.

At this stage I asked Mr MS Murthi:

Court: Did you tell Mr Balachandran that this case will be adjourned?

Mr Murthi: I said there is a likelihood if he is admitted.

I then decided to read aloud my record of what Mr Balachandran had told me in open court and asked Mr Balachandran, in the light of what Mr Murthi had said, if what Mr Balachandran had told the court as recorded by me was the true conversation between himself and Mr Murthi and whether Mr Balachandran wished to amend or correct any part of his statement to the court. For Mr Balachandran's benefit, I again re-read his statement as recorded by me. Mr Balachandran then confirmed that what he had told the court was true to the best of his recollection. I now record the verbatim transcript of the proceedings:

Court to Mr Murthi

You told this court that you only knew on Sunday that Mr A Ratos was admitted to hospital.

Mr Bala has told the court that you told him on Friday itself that Mr Ratos would be admitted and that the case won't proceed. On that basis Mr Bala agreed to appear in court today.

Court to Mr Bala

Is this correct?

Mr Balachandran

That's correct My Lord.

Court

Mr Murthi, it seems to me that you owe this court a clear explanation as to your conduct. You knew on Friday that your client will not be attending. But you told this court that you knew of this only on Sunday.

Court to Mr Murthi

If you wish to give an explanation you may proceed to do so.

Mr Murthi

I want to explain.

The actual admission I only knew on Sunday. The fact that he is going to be admitted because of his pain was from the 16th.

Now I say I knew this man was going to be admitted because he was complaining of the pain.

Mr Balachandran

Actually at 12 noon. I called Mr Murthi.

Mr Murthi

I did not know when he was going to be admitted.

Court to Mr Murthi

You are not answering my question which is from Mr Bala's statement. It is clear to me that on Friday you knew your client will not attend court today because Mr Bala used the words 'on that understanding I agreed to attend'.

Court to Mr Bala

If the court had refused the adjournment would you have been prepared to go on?

Mr Balachandran

No.

Court to Mr Murthi

I am repeating the question recorded earlier. What have you to say?

Mr Murthi

I was certain from the 16th that he was having pain and wanting to be admitted and if he is not admitted he will be in court and the matter will go on. I have nothing further to say.

Datin

What Mr Murthi is telling this court is that Mr Ratos (his client) told him that he is having pain and he wants to be admitted. I say this is a conspiracy between Mr Ratos and Mr Murthi to abort these continued proceedings today.

Today there is no medical certificate before this court.

Therefore I wish to make an application that a warrant of arrest be issued against Mr Ratos and Mr Philips Gomez and also there is clear contempt before this court today by Mr Murthi and as this contempt is in this court, I leave it to court.

Court to Mr Balachandran

Do you wish to say anything?

Mr Balachandran

No.

Mr Murthi

I am communicating to this court what Mr A Ratos told me. He was admitted five days earlier.

No basis for allegation of conspiracy.

Patient is in hospital. He is entitled to medical treatment.

Court to Mr Murthi

Tell me if as you say your client was admitted to hospital on Saturday, ie 20 July 1996, and you knew of these contempt proceedings, why didn't you get a medical certificate from the hospital and produce the same before this court.

Mr Murthi

I was in Alor Setar High Court yesterday and returned home at 8pm last night. This morning at 9am I was in the Federal Court and till now I have no time to go.

Court

You said you returned on Sunday at 8pm. What time did you get the message and who informed you that your client was in hospital?

Mr Murthi

The message was from the hospital through the client after 8pm.

Court

I had on the previous occasion when you said your client was in hospital told you that I will not accept your word or your letter. I wanted a medical certificate. And today you have not produced the medical certificate.

Mr Murthi

I have nothing else to say.

Court

The two contemnors Mr A Ratos and Mr Philips P Gomez have failed to attend court on contempt proceedings which are serious in nature.

I am issuing a warrant of arrest against both Mr A Ratos and Mr Philips P Gomez.

As for Mr Murthi

This court is satisfied that you, Mr Murthi, have not given a sufficient explanation as to why, when you knew on Friday when you spoke to Mr Balachandran at 12 noon that your client Mr A Ratos will not attend today, yet you told this court today that you knew of this only on Sunday. This to my mind is a clear contempt by you before this court.

Court

I find you in contempt of the court.

I therefore proceeded to issue a warrant of arrest against the first and second contemnors. After I had done that, Mr Murthi who was vacillating from wanting to engage counsel to wanting to purge his contempt, finally decided to retain counsel. I then adjourned proceedings to 30 July 1996 for Mr Murthi to mitigate. Since the entire day had been wasted, I awarded costs to the petitioners against all three contemnors to be taxed. I also ordered that the costs would include costs of executing the warrants against both the contemnors.

Whether the contemnor need be present

At this stage Mr Murthi argued that O 52 r 4 of the RHC did not require the presence of the contemnors. Whilst I find that in contempt proceedings it is necessary for the contemnors to be present in any case, I pointed out to Mr Murthi that on his own advice his client had elected to give evidence on oath. He could not choose to take the stand and then without leave of the court refuse to take the stand. In fact, I pointed out further that there was no evidence that Mr Ratos had refused to continue with his evidence. In fact, to a specific question by the court, Mr Murthi said that his client was not waiving his right to give evidence. I then adjourned proceedings to 30 July 1996.

On 25 July 1996, when I was already in open court on other matters, I was informed that Anthony Ratos through counsel, Raja Aziz Addruse was applying to cancel the warrant of arrest. The petitioners' counsel having been duly served with the application, was also present. Raja Aziz informed me that his client was earlier absent not with a view to hindering the course of justice but that he was truly repentent. It was urged upon me that for the future if Anthony Ratos did not present himself after becoming aware of the date of the proceedings and if his counsel was present, the court could in any case proceed in his absence. Further, it was submitted that if Anthony Ratos did not appear to continue with his oral evidence in court as he had been doing, then the court should apply the normal rules relating to evidence. Counsel for the petitioners, whilst reserving for himself the right to challenge the contents of the affidavit if it became necessary at a later part of the proceedings, did not object to the setting aside of the warrant of arrest against Anthony Ratos. However, he asked for costs. I ruled that I would not set aside the warrant but that I would stay the execution of the warrant and that if Anthony Ratos failed to attend court on 30 July 1996 for the continued hearing of the contempt proceedings, I would proceed in his absence.

Application for stay of sentencing A

On 30 July 1996, the day fixed for mitigation, Mr MS Murthi was represented by Dato' Kam Woon Wah and Mr RR Sethu on an urgent application (encl 103) for a stay of proceedings pending appeal against my finding that Mr Murthi was guilty of contempt. I was informed that an appeal had already been filed. Dato' Kam in his usual customary persuasive B manner did not dispute the power of the court to find a party guilty of contempt *ex facie*.

Mr Sethu then addressed the court and pleaded for a stay on three grounds:

(1) The applicant is an advocate and solicitor. The conviction itself has C very serious repercussions for his professional career. He is immediately liable for disciplinary proceedings.

(2) This case is peculiar and unique in the sense it is not often that a lawyer is found guilty of contempt.

(3) The stay pending appeal would not prejudice anyone because he can D still be dealt with if the appeal is dismissed. Assuming if he is sentenced to imprisonment or even fined, he will have to suffer for this even before the appeal is heard and it becomes all the more serious if he succeeds in the appeal.

I was told that in addition to this application for stay before me, another similar application had also been filed before the Court of Appeal *ex* E *abundante cautela*. I would not go into the propriety of making such an application to the Court of Appeal even before the application for stay before me had been heard.

In reply, Datin Saraswathy for the petitioners urged upon me to proceed with sentencing in any event since the application for stay had not shown any F special circumstances. In response, Mr Sethu urged that the argument relating to special circumstances was two-fold. Firstly, even in a civil appeal the need for special circumstances had been watered down and that the facts averred in Mr Murthi's affidavit constituted special circumstances.

At this stage it became necessary for the court to point out a factual G inaccuracy in Mr Murthi's affidavit in support of encl 103. He had averred in para 7 that I had said that a fine would not be adequate. I pointed out that that was totally untrue as reflected in what I had said in open court on 22 July 1996 as reported in the 'Star' wherein I had said:

> As far as I am concerned, for a solicitor to conduct himself in such a manner H that you did, a term of imprisonment will be in order. But before I make up my mind, I want to hear your mitigation.

The said news reporting from the 'Star' was offered to counsel for perusal. Mr Sethu promptly apologized on behalf of his client for the contents of the affidavit and asked for the said paragraph to be deleted from the I affidavit. I then drew Mr Sethu's attention to *Wee Choo Keong v MBf Holdings Bhd & Anor and another appeal* [1993] 2 MLJ 217 (SC) and to *Lakshminarayanan v Marimuthu* [1993] 1 MLJ 277. In the latter case, KC Vohrah J said at p 280:

> ... a person who has committed a civil contempt may be subject to the rule that the court will not hear an appeal or other application in the proceedings by a person disobeying an order of the court until he has purged his contempt.

I also pointed out that this was the principle set clearly in *Wee Choo Keong*. I then adjourned court to enable Mr Sethu to read the two cases I had referred to him.

When court resumed, Mr Sethu submitted that *Wee Choo Keong*'s case referred by me was an application by the contemnors to set aside the ex-parte order which he was found to have breached. But he pointed out that the appeal against the finding of contempt was reported in [1995] 3 MLJ 549. He argued that there is a distinction between an appeal against a finding of contempt and an application to set aside or vary the order that gave rise to the contempt. Referring to *Lakshminarayanan*, he submitted that the dicta of Vohrah J was in reference to varying or setting aside the order of contempt. I had no hesitation in dismissing the application for stay.

Dato' Kam then proceeded to mitigate. He began by agreeing wholly that sentencing will have to follow conviction. He submitted that during the adjournment he and Mr Sethu had successfully convinced Mr Murthi to throw himself at the mercy of the court. In mitigation, he submitted that Mr Murthi was under tremendous pressure of work travelling from Johore to Alor Setar between Friday to Sunday with a follow-up appearance on Monday in the Federal Court. He submitted that Mr Murthi was repentent and apologized to the court and undertook not to repeat such conduct. He pleaded against a custodial sentence and asked that Mr Murthi be admonished and discharged.

I then proceeded to sentence Mr Murthi to a day's imprisonment and a fine of RM50,000 in default 6 months.

As I had directed the doctor who had issued the medical certificate to Philips Gomez to appear in court to explain the issuance of the medical certificate, the said doctor appeared in court and explained that the second contemnor had breathing difficulties and asthma and that he had treated him. The second contemnor had asked for a medical certificate as he had to attend court the next day. Having heard the doctor's explanation, I cancelled the warrant of arrest against the second contemnor and ordered the bail money to be refunded.

Anthony Ratos then proceeded to continue with his evidence and confirmed the contents of his affidavit (encl 76). Under cross-examination by Mr Sodhi, he agreed that he was aware of two injunctive orders dated 23 February 1996 and 23 May 1996, inter alia, restraining him from interfering in the affairs of the fourth respondent. However, when he filed the winding-up petition against the fourth respondent, he believed he had a right to protect his interest. Dato' Kayveas did not want the second contemnor to give evidence on oath. He said that his client would rely on his affidavit. Mr Sethu too followed suit and submitted that Mr MS Murthi would rely on his affidavit (encl 77) and that therefore Mr Murthi would not take the stand.

On behalf of the first contemnor, Raja Aziz submitted in respect of ground one that parking an ambulance at the parking bay could not be the subject matter of contempt proceedings. Since he was living in the same premises, he urged upon me to take a generous view of the parking offence in that the ambulance was parked there by a forwarding agent and the same view ought to be taken in respect of the second ground of visiting the reception counter and distributing invitation cards, and the third ground of advertising and the subsequent sale of the furniture on the fifth floor of the fourth respondent. With regard to the next ground of going to the Public Bank Bhd to discuss the future loan application with the branch manager, NFY, counsel's submission was to leave this issue to the court. It was his contention that the witness had come to court under unusual circumstances in that he was summoned to appear. It was his submission that even if Anthony Ratos had met the branch manager, there is no basis for inferring that Anthony Ratos was interfering in the affairs of the fifth respondent by that fact alone because there was no act done which would make a commitment on the fifth respondent. With regard to the words 'interfere with' as stated in the orders, Raja Aziz referred me to *Thomas Francis Allen v William Cridge Flood & Anor* [1898] AC 1 at p 179 wherein Lord James of Hereford said:

> ... Before discussing the question, it is necessary that some definition of the words 'interfered with' in their legal sense should be given. Every man's business is liable to be 'interfered with' by the action of another, and yet no action lies for such interference. Competition represents 'interference,' and yet it is in the interest of the community that it should exist. A new invention utterly ousting an old trade would certainly 'interfere with' it. If, too, this loose language is to be held to represent a legal definition of liability, very grave consequences would follow.

It was his submission that if no specialised meaning is given to a word, the rule of construction is that that word must be given the literal and ordinary meaning. He further argued that the act of the first contemnor in going to the bank, even if it was to discuss a further loan to extend the premises of the fifth respondent, did not constitute interference. Even if the bank were to respond favourably to the application, the position of the fifth respondent could not be affected unless the fifth respondent subsequently accepted the offer for the loan.

In the course of his submission, Raja Aziz submitted that he was challenging the basis of granting the injunction. He relied on *Drewry v Thacker* (1819) 36 ER 963 at p 967 and *Partington v Booth* (1817) 36 ER 57 for the proposition that once an injunction had been given, he could by way of collateral proceedings challenge that injunction. It was his contention that in committal proceedings such as this, it was open to the contemnor to show that the injunction granted was not proper, without the need of having to first challenge it by applying to set it aside. Since the petitioners were claiming reliefs under s 181 of the Companies Act 1965 ('the Act') on the grounds of oppression, he argued that the only person who could complain was a member of the company. It was the further contention of the first contemnor that s 181 contemplates that each application under

A that section would be in respect of one company with respect to which the allegations of oppression are made. At this juncture, Mr Sodhi objected on the ground that the issue relating to s 181 had not been raised in the first contemnor's affidavit and therefore he ought not to be allowed to raise this issue now. Raja Aziz submitted that in an affidavit, one does not argue questions of law and that was why his client had not raised it in the B affidavit. It was his contention that in a criminal matter one could raise any defence and that there was no necessity to plead such issues in the affidavit.

Mr Sodhi replied that before issues of law are raised, there ought to be facts based on which issues of law are to be raised. There ought to be C something in the affidavit to the effect that the order was improperly obtained. The allegations in the affidavit was that the order was ambiguous. The order was not challenged in any other respect. It was pointed out to me that raising the issue of s 181 at this stage would result in allowing the party to relitigate the entire injunctive orders which were made inter partes D and when parties were represented by counsel.

I ruled that since the basis of the contempt proceedings arose out of the s 181 petition, in the exercise of my discretion I would allow the first contemnor to submit on this issue, although it was my view that merely because these proceedings are criminal in nature, that did not as of right allow the contemnor to raise any issue not raised in his affidavit. E

Raja Aziz then argued against the very propriety of the s 181 petition. He submitted that since the injunctive orders referred to four respondent companies lumped together under the s 181 petition, on the principle that a petition must be in respect of one company, and since this petition encompassed the fourth, fifth, sixth and seventh respondents at the same F time, such a petition was *ab initio* defective and misconceived. Therefore, it was argued that any interlocutory injunction made to protect rights claimed under the Act must also have been improperly granted. In the circumstances at worst, the acts committed by the first contemnor even if they constituted breaches of the injunction, amounted only to a technical offence. Raja Aziz cited no authority for such a proposition save that he G relied on the section itself. At this stage, counsel for the first respondent applied to court to tender details regarding the membership of the petitioners. Mr Sodhi objected on the basis that the first respondent had agreed with the court that he would not be raising issues of fact and that the share-holding that is sought to be introduced was based on facts. H I overruled the objection and allowed counsel to submit purely on the basis that these are quasi-criminal proceedings with a possibility of punitive action and therefore I was prepared to give a wider latitude in the admission of this document.

With reference to the said list, counsel submitted that in respect of I the fourth respondent, the only member of the company among the petitioners was the first petitioner herself.

With regard to the charge of filing the winding up proceedings, counsel for the first respondent submitted that the two injunctive orders

cannot be taken to preclude the first contemnor from exercising his legal right to present the winding up petition. If he is indeed allowed to present the winding up petition, then the duty to advertise must follow. He submitted that whether there has indeed been a breach of the injunction or not, I ought to look at the terms of the injunction. Consequently if his client had the right to advertise, then any notice to the bank would be part of that advertisement. In respect of the fourth respondent against whom the first respondent had presented a winding up petition being the subject matter of the contempt proceedings, there are four directors, namely the first, second and third petitioners and the first contemnor and only the first petitioner is the shareholder of the fourth respondent.

With regard to the test that ought to be applied in respect of contempt proceedings, counsel relied on *In Re Bramblevale Ltd* [1970] 1 Ch 128 at p 137.

In reply to the first respondent's submission, counsel for the petitioners argued that with regard to the first charge of parking, if the forwarding agents had actually parked the ambulance in the prohibited place, then there ought to have been an affidavit by him to that effect and since this parking space was used by the fourth respondent to receive patients, it interfered with and obstructed the affairs of the fourth respondent. As to the surrender of the said space to the government, it was urged upon me to reject this contention in the absence of evidence.

With regard to the second charge of distributing invitation cards at the reception counter, he was specifically injuncted against communicating with the staff and specialists of the fourth respondent in respect of any matter. In his own affidavit he had admitted communicating with the staff and the statutory declaration of Teresa Thivianathan, the receptionist at the counter, to this effect was confirmation of this fact.

With regard to the third ground of spreading the furniture on the fifth floor of the fourth respondent's premises, the injunction only allowed the first contemnor access to his own room on the fifth floor of the fourth respondent's premises. It was submitted that if he needed to vary the injunction he ought to have applied to court to do so rather than breach the injunction.

With regard to the next charge of interfering with the bank, it was pointed out to me that the first contemnor was restrained by the injunction from holding himself out as representing the fouth, fifth, sixth and seventh respondents howsoever. The first injunction dated 23 February 1996 was entered by consent. Yet exh M which is dated 19 April 1996 clearly showed that the first contemnor had interfered. I was urged to reject exh A to encl 76 which has the first contemnor's name missing and to accept the bank manager NFY's evidence that the first contemnor had called him up and informed NFY that the name of Anthony Ratos cannot be mentioned in the letter. It was submitted that the endorsement in exh D1 was inconsistent with Anthony Ratos's assertion that he was referring to a profile rather than to a letter.

A With regard to the charge of presenting a winding-up petition in court D1 by way of case No 28–216–96 (exh 1 to encl 72) it was pointed out that such a conduct as to present the said winding up petition and sending letters to the various banks constituted interfering with the affairs of the company. It was no defence to say he was advised so to act. This can be taken into account towards mitigation.

B With regard to the first contemnor's contention that the s 181 petition itself was improper, the petitioners argued that s 181 does not regulate the procedure pertaining to joinder of parties. In any event, this issue was canvassed and argued before me in respect of encl 14 by the first contemnor's previous solicitors which was an application for the C interlocutory injunction which order I granted on 23 May 1996 and against which the first contemnor filed a notice of appeal.

With regard to the first contemnor's submission that the court order cannot preclude a person from exercising his legal right, the petitioners submitted that a party may so act as to forfeit the exercise of a legal right D by his conduct. Since the first contemnor was aware of both the orders, he ought not to have filed the said winding-up petition.

The second contemnor

The first charge against the second respondent was that on 28 March 1996 E he went to the office of the fourth respondent and met its personnel manager, Teh Chin Lai on the instructions of the first contemnor and assisted the first contemnor in interfering in the affairs of the fourth respondent. The said Teh Chin Lai had affirmed an affidavit that on the day and place stated earlier the second respondent had called on him and informed him that he had been instructed by the first contemnor to F demand for rentals. He also demanded the keys to all the suites and offices of the fourth respondent to be handed over to him immediately. He had alleged that there was a court order entitling him to do so. When Teh Chin Lai requested for a copy of the said order, the second respondent was unable to produce a copy of the same. He then informed the second G respondent to put his request in writing. He further averred that he had informed the second respondent of the injunction restraining the first contemnor or his servants or agents from interfering in the affairs of the fourth, fifth, sixth and seventh respondents. The second respondent had informed him that he was aware of the said injunction but that he was acting on the instructions of the first contemnor. The second contemnor H whilst admitting that he went to the office of Teh Chin Lai and had met him, however, explained that he went there in his capacity as the managing director of the fifth respondent to lease out the fifth floor which floor had not been leased out and that he saw Teh Chin Lai to obtain the keys to the suites on the fifth floor. Since there was no rebuttal to this affidavit, he I asked me to accept his explanation.

The second charge was that on 17 April 1996, the second contemnor assisted and aided the first contemnor to attend a meeting with the branch

manager of Public Bank Bhd, NFY, to discuss matters prohibited by the injunction orders dated 23 February 1996. In his affidavit in reply, he averred that he and another director of the fifth respondent, one John, attended the bank on 17 April 1996 to discuss a loan in respect of the company property and that it was sheer coincidence that he had met the first contemnor there. This averment was also not rebutted. Dato' Kayveas also acting for the second contemnor urged upon me to draw a distinction between disobedience to a court order done deliberately and an act which lacked intention. He submitted that merely being seen in the company or giving cooperation to someone else who has been injuncted ought not to be held against his client.

In response, Mr Sodhi for the petitioners pointed out to me that the second contemnor was not cited for contempt for disobeying the injunction dated 23 February 1996, but for assisting in disobeying the order. Regarding the factual submission, he submitted that Teh Chin Lai is an independent person who had made an averment. Further, NFY attended court and identified the second contemnor as the one who attended and discussed the loan. The matters discussed were referred to in exh M. He urged me to hold that the charges had been proved as against the second contemnor.

The third contemnor

Mr Sethu for the third contemnor, submitted that so far as his client was concerned, there was only one charge of presenting, serving and advertising the winding-up petition. He confirmed his client's instructions not to oppose the motion in so far as liability was concerned, but to say the following by way of explanation and mitigation.

(1) The petition was filed in honest and reasonable belief that the order of 23 May 1996 did not preclude the filing of a winding-up petition.

(2) So far as the order was concerned, it was Mr Murthi's interpretation that it was limited to the management of the fourth respondent company by the first respondent and he took the view that it did not affect the statutory right of the first respondent to present the winding-up petition.

(3) The word 'interference' was subject to one of two interpretations.

He pleaded that there was no intention to disobey the order as it was done in honest good faith. He now clearly accepted that he was wrong and in his affidavit encl 77, he had tendered an unreserved apology and promised to conduct his affairs in future with great care and with less impetuosity. He urged the court to extend the hand of mercy as he had suffered throughout these proceedings.

I have read all the submissions of the parties and analysed all the cases cited by counsel.

The first contemnor

It cannot be denied that part of the first injunctive order dated 23 February 1996 was made with the consent of the first contemnor who was represented

A by counsel. Subsequently, having heard arguments, I confirmed on 23 May 1996 the earlier injunction that was granted. I find as a fact that the first respondent had notice of both these orders as he was present in court when I made both these orders. I shall consider each of the charges against the first contemnor.

B (1) *Offence of parking*

I found from the evidence that this charge had not been proved. Since there is no indication of any cross appeal by the appellants, I shall not give my reasons for dismissing this charge.

C (2) *Incident at reception counter*

This was the next charge. I found from the evidence and from his own admission that the first contemnor did go to the reception counter of the fifth respondent to distribute invitations to the first and second petitioners and to the specialist consultants of the fourth respondent. I accept as true the contents of the statutory declaration from the receptionist to this D effect. In his defence, the first contemnor merely submitted that he had gone to the reception counter to collect his mail. There was no denial or explanation in respect of the statutory declaration of the receptionist. The second contemnor was specifically injuncted against interfering in the affairs of the fourth respondent. The invitation cards were in respect of the E launching of an ambulance service. Soon after the petitioners' solicitors had protested by way of a notice, the first contemnor called off the proposed launching of the ambulance service.

On the facts I find that this charge had been proved.

F (3) *Advertising and sale of Javanese teak furniture*

The first contemnor advertised in a local newspaper that he was selling new Javanese teak furniture on the fifth floor, Room 507 of the fourth respondent. The said furniture was laid throughout the fifth floor in a show room style. Outsiders had come to view these furniture. The first contemnor's response that he had obtained the permission of the fifth G respondent's directors to use the area near his suite is unacceptable. The terms of the injunction only allow him access to his own room on the fifth floor of the fourth respondent's premises. Clearly, if he had wanted to use the entire floor, he ought to have written to the petitioners for consent or if such consent was refused, ought to have applied to court for a variation H of the order. If the first contemnor was uncertain as to his rights or if he had doubts as to the scope and extent of the injunctive order, he ought to have applied to court for a variation. Instead, notwithstanding that he was aware of the order, he chose to ignore it with impunity. He was enjoined to obey. By his conduct, he refused to obey the order of the court. I therefore found this charge too proved.

I

Filing a winding-up petition against the fourth respondent and serving the same on 21 June 1996

Advertising the said petition in The Star and in The New Straits Times on 22 June 1996

Giving notice to the fourth respondent's banks of the petition and freezing the accounts

I shall deal with these charges at the same time. The said petition which was filed on 18 June 1996 was served on the fourth respondent on 21 June 1996 at 4.10pm. It was however advertised the very next day in two major newspapers. I also note that the date endorsed on the petition for its hearing was 25 July 1996. Pursuant to r 24 of the Companies (Winding Up) Rules 1972, the petitioner could place his advertisement seven clear days or such longer time as the court may direct before the hearing of the petition. The petitioners speed and alacrity in causing these advertisements to be placed in both the newspapers the very next day after serving the petition on the solicitors at 4.10pm of the previous day, clearly smacks of the joint effort of calculated and scheming minds to thwart the respondent's possible attempt to get an ex parte order to restrain the publication of such advertisements. The submission of Mr Sodhi on this issue is reasonable and is acceptable.

On the same day that the petition was served, Murthi and Partners, solicitors for the first contemnor gave notice to Chung Khiaw Bank (M) Bhd and to Standard Chartered Bank (M) Bhd and caused the bank accounts of the fourth respondent company to be frozen with immediate effect. In his letters to the bank, Murthi & Partners drew the respective banks' attention to s 223 of the Act. On the evidence, I have no hesitation in holding that the filing of the petition and the notice given to the banks were acts perpetrated with the avowed aim of freezing the fourth respondent's accounts. The fourth respondent is running a hospital and the repercussions of having frozen the accounts of a hospital are grave and serious. These sinister acts were calculated to bring the fourth respondent to its knees and to the negotiating table. I find that such acts were clearly for the collateral purpose of taking an unfair advantage over the fourth respondent and thereby enabling the first respondent to interfere with the operation of the fourth respondent, an act he was clearly injuncted from doing. I also find that the filing of this petition was a tit-for-tat action to force the petitioners to withdraw their petition. For all these reasons I have no hesitation in finding the above charges proven against the first contemnor.

Meeting at the bank with Ngeow Foo Yoke

It is common ground that both the first and second contemnors were present in the office of NFY, the branch manager, and discussed further loan application for the extension of the present properties of the fifth respondent. NFY himself testified to this effect. In the course of the submission, two documents, namely exhs A6 and M, were before the court. Both documents were alleged to have been signed by NFY and both were dated 19 April 1996, the day both the first and second contemnors were alleged to have discussed the further loan applications for the extension of the present properties of the fifth respondent. In exh M, NFY had made clear reference to the visit by both the first and second contemnors to his

office to discuss the said loan. In exh A6, the name of the first respondent is significantly missing.

Since it was vital for the present proceedings for the court to know the truth of the matter and since the significant absence of the name of the first contemnor in exh A6 needed to be explained as it was filed in challenge to exh M which was disclosed earlier by the applicant, I decided to exercise my discretion in the interest of justice, to call NFY to attend court to clarify the discrepancy. Contempt of court may be classified either as: (1) criminal contempt consisting of words or acts obstructing or tending to obstruct or interfere with the administration of justice; or (2) contempt in procedure, otherwise known as civil contempt, consisting of disobedience to the judgments, orders or other process of the court, and involving a private injury. Criminal contempt is an offence punishable by imprisonment or a fine or by an order to give security for good behaviour (see 9 *Halsbury's Laws* (4th Ed) at p 3).

Contempt of court is an act committed or word said in relation to the affairs of the court. The court is the party affected by the contempt.

Since both the applicant and the first contemnor had filed affidavits and exhibited the differing exhibits and since the first contemnor's challenge to exh M rather than clarifying the matter made confusion more confounded and since there was no affidavit to explain the discrepancy in the two exhibits and since the first contemnor did not ask for an adjournment or an opportunity to file an affidavit to clarify, and bearing in mind that every opportunity must be given to a contemnor to explain his conduct, I called for NFY to attend court. I had in mind the decision of Lord Esher MR in *Coulson v Disborough* [1894] 2 QBD 316 (CA) who said at p 318:

> ... If there be a person whom neither party to an action chooses to call as a witness, and the judge thinks that that person is able to elucidate the truth, the judge, in my opinion, is himself entitled to call him; and I cannot agree that such a course has never been taken by a judge before. When a witness is called in this way by the judge, the counsel of neither party has a right to cross-examine him without the permission of the judge. The judge must exercise his discretion whether he will allow the witness to be cross-examined. If what the witness has said in answer to the questions put to him by the judge is adverse to either of the parties, the judge would no doubt allow, and he ought to allow, that party's counsel to cross-examine the witness upon his answers. A general fishing cross-examination ought not to be permitted.

In the same case, Smith LJ said at p 318:

> A witness called in this way is the witness of the judge, not of either of the parties. It is the function of the judge to try and find out the truth, whether he is hearing the case with or without a jury. Neither party can cross-examine a witness so called as of right; the leave of the judge must be obtained.

It was open to NFY to have explained that the name of Anthony Ratos was in fact included in error in exh M thus vindicating the contemnors of this charge. On reflection, I am of the view that I ought to have allowed the

parties to call NFY as a witness, but in any event no objection was raised by any party to the court exercising its discretion to call this witness. In fact, Mr Murthi himself proceeded to examine NFY on oath who confirmed that the first and second contemnors did indeed discuss the loans as stated in the title to both exhibits. He also confirmed that the first contemnor had telephoned him and said that his name, that is Anthony Ratos' name, cannot be in the letter. The witness then proceeded to prepare exh A and the first contemnor said he would call and exchange exh M for exh A which would show the deletion of the first contemnor's name. This agreement to exchange the letters was endorsed on the cover of an envelope marked exh ID1. Since this endorsement was said to have been made by the first contemnor, I had to mark it for identification (ID1) and I called upon the first respondent to merely identify the exhibit.

At this stage, Mr Murthi objected to the first contemnor taking the stand to give evidence. When I informed him that the first contemnor was not being called to give evidence, but only to identify the exh ID1 since the document was marked only for identification and his client was said to be the writer, he asked to examine the exhibit. Having done so he again maintained his objection to his client taking the stand merely to identify the exhibit. I overruled the objection and directed Anthony Ratos to take the stand only for the purpose of identifying the exhibit ID1. Anthony Ratos was specifically directed by me that he need not make any statement. Mr Murthi then confirmed that his client wanted to testify as to what transpired at the bank only. I again drew Mr Murthi's attention to the fact that his client was not obliged to testify. Since Anthony Ratos wanted to restrict his testimony, Mr Sodhi objected to this restriction. I then directed that since Mr Anthony Ratos voluntarily wished to testify, I would allow for cross-examination which would not be restricted to the witness's choice of evidence. At this stage, Anthony Ratos still had the choice of refusing to testify. Instead, Mr Murthi told the court that his client wanted to give evidence on everything.

Anthony Ratos' evidence with regard to D1 was totally baffling. He confirmed his handwriting on D1, but maintained that what he was referring to as wanting to exchange, was his company's profile with the original which had the photographs of the ambulance in it. The exchange was in relation to this and not to the letters. Since he had earlier, on 17 April 1996, given the original to NFY, he wanted that original back and so was exchanging another copy. His evidence was that there was no question of exchange of letters. The exchange was in respect of the company's profile.

The absurdity of this story is all the more profound when seen in the light of the evidence of NFY. There is no reason for NFY to lie. There was no suggestion of any animosity between NFY and the first contemnor. In any event, this version of the company profile was never put to NFY when Mr Murthi examined him. The law journals are replete with authorities that propound the principle that a party has to put its case to the other party to allow the other party an opportunity to explain. The first contemnor

having miserably failed to explain his conduct with regard to the two letters, I find this charge also proved.

Contempt in facie curiae

On the next date for continued hearing that is on 10 July 1996, the first contemnor was absent and I was informed by his counsel, Mr MS Murthi that the first contemnor had informed him of chest pain and that he had wanted to be admitted to hospital. I adjourned hearing on this score. The case against the other two was also adjourned to the same day, that is 15 July 1996. On this date, Mr Murthi tendered a letter again informing the court of his client's illness with an undertaking that he would obtain his client's medical certificate. I again adjourned the case to 22 July 1996 at 11am.

At 11 am of 22 July 1996, I was informed that except for the applicants'/petitioners' counsel, none of the three contemnors and their counsel was present. I finally decided to proceed with the matter at 11.27am. It was then that Mr Balachandran addressed me on matters I had narrated *in extensio*. Since Mr Murthi had informed Mr Balachandran that his client would not be attending, the least he could have done was to have asked Mr Balachandran to inform the court that Mr Murthi would be late. Mr Balachandran would have no doubt said so if he had received this message. Mr Murthi finally attended at 11.35am with an apology that he was at the Federal Court.

On the issue of the *ex facie* contempt, I had found that Mr Murthi's explanation given to me with regard to his client's absence and the version he gave Mr Balachandran, who was given an opportunity by me to correct and amend any part of his statement, clearly contradictory. Mr Balachandran knew for sure that one of the parties would not attend court. It was on that basis that he was prepared to attend court merely to adjourn the case. In fact, he readily admitted to me that it was on that understanding that he was before me. I therefore had no hesitation in finding Mr MS Murthi guilty of contempt *ex facie* for failing to give me a satisfactory explanation as to his client's absence from court considering the fact that the case had to be postponed for the third time. In *Balogh v Crown Court at St Albans* [1974] 3 All ER 283 in respect of contempt in the face of the court, Lord Denning MR had this to say at p 289:

> Insults are best treated with disdain — save when they are gross and scandalous. Refusal to answer with admonishment — save where it is vital to know the answer. But disruption of the court or threats to witnesses or to jurors should be visited with immediate arrest. Then a remand in custody and, if it can be arranged, representation by counsel.

In the instant case I had no hesitation in holding that the conduct of Mr MS Murthi was calculated to disrupt court proceedings by manoeuvring an adjournment and that he had the *mens rea* so to do. See *Re Supply of Ready Mixed Concrete* [1991] 3 WLR 709 (CA). I also issued a warrant of arrest against the other two. I subsequently cancelled the warrant issued

against the second contemnor after he had apologized to the court. In respect of the first contemnor, I stayed the execution of the warrant to ensure his attendance. I also awarded costs to the petitioners against all three contemnors for the adjournment.

I then fixed 30 July 1996 for Mr Murthi to mitigate and for sentencing. Mr Sethu appeared for Mr Murthi and asked for a stay of sentence pending an appeal on my finding of contempt *ex facie* against Mr Murthi. The three reasons expounded by Mr Sethu were in my view unmeritorious. Mr Sethu then switched his arguments and relied on special circumstances. In the light of *Wee Choo Keong v MBf Holdings Bhd & Anor and another appeal* [1993] 2 MLJ 217; [1995] 3 MLJ 549 and *Lakshminarayanan v Marimuthu* [1993] 1 MLJ 277, I rejected the application for stay. Dato' Kam Woon Wah then agreed with my decision that sentencing will have to follow a conviction. As a result of the mitigation, I sentenced Mr MS Murthi to a day's imprisonment and a fine of RM50,000 in default six months.

Contempt of court itself is deplorable; but contempt of court *ex facie* is a heinous offence. It is on this account that the court is given the discretion to punish for contempt of court *ex facie* without the need to comply with the strictures of O 52 of the RHC. The conduct of a party or counsel ought not to be odious or wicked or calculated to demean the dignity and standing of the court. I would include into this category acts or words used which would tend to show a deliberate attempt to mislead the court, or to interrupt court proceedings or even to disrupt it by manoeuvring an adjournment. In this case, Mr Murthi knew on Friday when he spoke to Mr Balachandran that Anthony Ratos would not be attending court on Monday. However, in court he said he only knew of this on Sunday. To my mind, this was a deliberate act to mislead this court into granting an adjournment. It is *apropos* that I cite Lord Denning MR in *Morris and others v The Crown Office* [1970] 1 All ER 1079 at p 1081:

> ... The phrase 'contempt in the face of the court' has a quaint old-fashioned ring about it; but the importance of it is this: of all the places where law and order must be maintained, it is here in these courts. The course of justice must not be deflected or interfered with. Those who strike at it strike at the very foundations of our society. To maintain law and order, the judges have, and must have, power at once to deal with those who offend against it. It is a great power — a power instantly to imprison a person without trial — but it is a necessary power.

The sentence therefore must reflect the gravity of the offence. Mr Murthi is not a young fledging lawyer who in his exuberance could be said to have committed such an offence. Mr Murthi is a senior practitioner whose practice is mainly in commercial matters. In *Trustees of Leong San Tong Khoo Kongsi (Penang) Registered & Ors v SM Idris & Anor and another application* [1990] 1 MLJ 273 at p 277, the Federal Court issued a stern warning that it would not hesitate to impose custodial sentence in cases of contempt of court. Mr Murthi was given an opportunity to explain the existence of the clear difference between the two versions relating to his client's absence in court. He either did not wish to do so or had none to

give. The act of deliberately misleading a court, committed by a lawyer of such seniority and who commands, on the basis of such seniority, equal respect both from the Bench and clients must be dealt with with equal show of gravity to reflect the seriousness of the offence and as a deterrence both to Mr Murthi and for anyone else who might be tempted to follow in his footsteps.

The authorities showed a fine ranging between RM2,000 to RM5,000 for cases on contempt. To my mind, a fine of RM2,000 or RM5,000 is not at all reflective of the gravity of the offence. I was therefore constrained to pass a sentence that would be an indication of the seriousness with which this court will treat an offence of this nature. I therefore sentenced Mr Murthi to a day's imprisonment and RM50,000 in default six months.

Mr Murthi paid the fine and he was released at the end of the day when the court rose.

Anthony Ratos then continued with his evidence and confirmed the contents of his affidavit (encl 76). Under cross-examination, he admitted being aware of the contents of the two injunctive orders restraining him from interfering with the affairs of the fourth respondent, but that he believed that he was protecting his interest when he filed the winding-up petition against the fourth respondent.

When Raja Aziz took over the conduct of this case on behalf of the first contemnor, he made a second submission on all the respective charges. In respect of this particular charge, he argued that the word 'interfere with' ought to be given its ordinary and literal meaning since no specialized meaning has been ascribed to it in respect of breaching the injunction and that I ought to follow the loose interpretation given to the words 'interfere with' as propounded in *Thomas Francis Allen v William Cridge Flood & Anor* [1898] AC 1 at p 179 in that a mere act of a seemingly interfering conduct however innocent it might be, cannot be deemed to be interference with.

An order of court must be obeyed and I agree with Raja Aziz that I ought to give the simplistic meaning to the word 'interfere'. *The Shorter Oxford English Dictionary* defines 'interfere' as 'to meddle with'. On the facts, I find that the first contemnor did indeed meddle with the affairs of the fourth respondent. I reject the submission of counsel that even if the bank were to respond favourably to the application for the loan, no offence is deemed to have been committed unless the fifth respondent subsequently accepted the offer of the loan. If this argument is to be accepted, it would then mean that any party who has been served with an injunction can proceed to interfere with the affairs of the party against whom he is prevented from interfering, provided he can show that nothing has come out of the said interference.

I now have to consider the submission of the first contemnor that it is open to him in collateral proceedings such as this, namely contempt proceedings, to challenge the grant of the injunction itself. In support, he relied on *Drewry v Thacker* (1819) 36 ER 963. With respect, I decline to accept this argument. Lord Chancellor Eldin said at p 967:

> ... On a full explanation of the facts, there might have been a difficulty in granting that application; the order, however, has been made, and must be obeyed: but on an application against persons guilty of a breach of it, the court would forget its duty, if it did not give to them the benefit of the fact that the order ought not to have been made.

This case therefore is clear authority that whilst the order granting the injunction must be obeyed, yet if the court, hearing contempt proceedings arising out of a breach of the injunction, is of the view that the injunction ought not to have been granted, then the sentence passed must reflect such a view. It is not an authority for the suggested proposition that the grant of injunction itself could be challenged. This was the same view taken in *Partington v Booth* (1817) 36 ER 57 where the Lord Chancellor made no order to commit a party for the contempt of a breach of an injunction since there was evidence that the injunction was improperly issued.

The s 181 challenge

Although this challenge was never raised in encl 76, that is the first contemnor's affidavit, in the interest of justice and with a view to allowing a contemnor every opportunity to explain his conduct and exculpate himself, I overruled the petitioners' objection and allowed the first contemnor the opportunity to submit on this issue. Raja Aziz raised the same issue that had earlier been raised in encl 14 and on which I had already made a ruling, that is, whether in a s 181 petition, the petitioners could lump together various respondents rather than filing an individual petition against each of the respondent companies. The first contemnor having filed a notice of appeal against my decision in respect of encl 14 and having given notice of withdrawal of the said appeal, is now estopped from raising this challenge any further. In this, I am guided by the decision of Edgar Joseph Jr J (as his Lordship then was) in *Tan Lay Soon v Kam Mah Theatre Sdn Bhd* [1992] 2 MLJ 434 where his Lordship held that a decision given by a court at one stage on a particular matter or issue is binding on it at a later stage in the same suit or in a subsequent suit. He further held that parties may not raise for a second time on the same suit an issue that has already been determined expressly or by necessary implication. This view was echoed by the Court of Appeal in *Hartecon JV Sdn Bhd & Anor v Hartela Contractors Ltd* [1996] 2 MLJ 57 where Gopal Sri Ram JCA said at p 66:

> ... once a judge makes a ruling, substantive or procedural, final or interlocutory, it must be adhered to and may not be reopened willy-nilly.

Exercise of legal right

Regarding the first contemnor's submission that a court order cannot preclude a person from exercising a legal right, I hold that a party may by his conduct or act forfeit the exercise of a legal right. In *Clarke & Ors v Chadburn & Ors* [1985] 1 All ER 211, the court held that an act done in wilful disobedience of an injunction or court order was not only a contempt of court, but also an illegal and invalid act which could not therefore effect

A any change in the rights and liabilities of others. I therefore reject the submission that the injunction did not restrain the first contemnor from filing the winding-up petition because the act of filing in the face of the injunction is by itself an illegal act.

Having considered the various submissions, I also found that the last
B charge against the first contemnor also proved.

I find on the basis of *Pembinaan KSY Sdn Bhd v Lian Seng Properties Sdn Bhd* [1991] 1 MLJ 100 at p 102 that any order must be obeyed unless and until it is set aside and that there are no orders void *ipso facto* without the need for proceedings to set them aside. It is therefore the plain and
C unqualified obligation of every person against whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. In *Hadkinson v Hadkinson* [1952] 2 All ER 567, the Court of Appeal held that the disobedience of such an order would result in the person disobeying the order liable in contempt and punishable by committal or attachment and an application to the court by him not being entertained,
D until he had purged his contempt.

Test to be applied in contempt cases

Whether the contempt proceeding is by way of *in facie curiae* or by way of motion, the same rigorous test, that the charge must be proved beyond
E reasonable doubt, must be applied. I accept the submission of Raja Aziz that I ought to accept this test as stated by Lord Denning MR in *Re Bramblevale Ltd* [1970] 1 Ch 128 at p 137:

> A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-
F honoured phrase, it must be proved beyond reasonable doubt. It is not proved by showing that, when the man was asked about it, he told lies. There must be some further evidence to incriminate him. Once some evidence is given, then his lies can be thrown into the scale against him. But there must be some other evidence.

In the present case and with regard to the contempt on the face of the
G court, the evidence of Mr Murthi was clearly in variance with the evidence given by Mr Balachandran and Mr Balachandran had told the court that what he had said to the court was what Mr Murthi had told him. Each was given an opportunity to explain and each stuck to their own respective versions.

H With regard to Anthony Ratos, I had clearly analysed the evidence in respect of each of the charges before finding him guilty. I had strictly applied this test in this case and am satisfied that the contemnors had been rightly found guilty. The conduct of the contemnors was wilful. It is *apropos* to my finding that I refer to the judgment of Edgar Joseph Jr J (as
I his Lordship then was) in *Messrs Hisham Sobri & Kadir v Kedah Utara Development Sdn Bhd & Anor* [1988] 2 MLJ 239 at p 245, wherein his Lordship said:

> There is authority for the view that an order for committal or the issue of a writ of sequestration is only appropriate where the contempt is wilful (see

Fairclough & Sons v Manchester Ship Canal Co (1897) 41 SJ 225; [1897] WN 7). Indeed, the former Rules of the Supreme Court in England imposed such a requirement specifically. However, the present O 45 r 5 in England, which is in pari materia with the identically numbered rule in our Rules of the High Court, omits the word 'wilful'. Nevertheless, the word 'wilful' must be taken to be silently implied and so the position remains unchanged despite the omission (see *Heaton's Transport v TGWU Ship Canal Co* [1973] AC 15).

I then invited counsel to mitigate before I passed sentence on the first contemnor. His mitigation was that he had acted on counsel's advice when he filed the winding up proceedings and that there was no serious consequences in that although the court had found that the first contemnor had been involved in the discussions regarding further funding, nothing had come out of it. This submission is unacceptable. In *Re Agreement of the Mileage Conference Group of the Tyre Manufacturers' Conference Ltd* [1966] 2 All ER 849, the court held that the acts of the members being in breach of their undertakings to the court, it was no answer to the then proceedings for contempt to maintain that the breaches were not contumacious, for the breaches of the undertakings would have constituted contempt even though the acts were things done reasonably, after all due care and attention, and in the belief, based on legal advice, that they were not breaches of the undertakings.

It is noteworthy that to the very end, the first contemnor had been unrepentant. The easing of the passing of the contempt proceedings and especially at the sentencing stage, depends on the conduct of the contemnor. His remorse and repentance must be factors that the court ought to take into account. In this case, there was no apology from the first contemnor for his various breaches of the injunction. His mitigation was justification. It was necessary therefore for the court to impose a sufficiently deterrent sentence that would equate to a purging of his contempt. On the second charge of the incident at the reception counter, I fined him RM10,000 in default one month's imprisonment. In respect of the third charge of advertising and sale of the teak furniture, I also imposed a fine of RM10,000 in default one month's imprisonment. In respect of the seventh charge of meeting the bank manager and thus clearly interfering with the affairs of the fifth respondent, I fined him RM30,000 in default three months' imprisonment, and in respect of the fourth, fifth and sixth charges involving the filing of winding up proceedings, I also fined him RM30,000 in default three months' imprisonment. I refused a stay pending appeal on the basis that the first contemnor must purge his contempt. However, at counsel's request I allowed for time up to 12 noon to pay the fine, which was paid. In passing the above sentences, I took into consideration that the first contemnor is a director of various companies and that a fine of any less sum than that I had imposed would make a mockery of the charges he had faced. Corporate figures, dealing in large sums of money, must be made to realize the added responsibilities that come with that high office and that the ramifications of breaches of their duties would result in substantial fines, if not a term of imprisonment.

The second contemnor

In respect of the second contemnor, I find that he was a mere tool used by the first contemnor for his own gain. In respect of the first charge, I see no reason to doubt the veracity of the contents of the affidavit of Teh Chin Lai who stated in no uncertain terms that the second contemnor was instructed by the first contemnor to demand for rentals and the keys to all the suites and offices of the fourth respondent. The second contemnor admitted going to the office of the said Teh Chin Lai; however he explained that he went to see the said Teh Chin Lai to lease out the fifth floor. Since there was no rebuttal affidavit, I was asked to accept his explanation. Teh Chin Lai was a totally disinterested and independent party who affirmed an affidavit on oath. If the said Teh Chin Lai had given oral evidence before me to this effect, I would have no hesitation in accepting the evidence of Teh Chin Lai. The mere fact that there is no rebuttal affidavit does not mean that every aspect of the evidence in the earlier affidavit must be accepted. In this case, the second contemnor has given no reason why Teh Chin Lai would affirm a falsehood. I therefore found the charge proved.

In respect of the second charge, his explanation was that it was sheer coincidence that he and the first contemnor were present in the office of the bank manager, NFY. Based on the evidence of NFY who identified the second contemnor as the party who discussed the loan, I find that the second charge too had been proved against the second contemnor.

In *Seaward v Paterson* [1897] 1 Ch 545 (CA) and in *Hubbard v Woodfield* (1913) 57 Sol Jo 729, it was held that a third person aiding a party to flout an injunction may be guilty of contempt. There is a clear distinction between a motion to commit for breach of an injunction on the ground that the contemnor was bound by the injunction and a motion to commit on the ground that the contemnor has aided and abetted a defendant in a breach of an injunction. In the first case, the order is made to enable the plaintiff to get his rights; in the second, because it is not for the public benefit that the course of justice should be obstructed. In fact, in *TO Thomas v Asia Fishing Industry Pte Ltd* [1977] 1 MLJ 151, the then Federal Court held that the court had undoubted jurisdiction to commit for contempt a person not included in an injunction or a party to the action who, knowing of the injunction, aids and abets a defendant in committing a breach of court's order. In the present case, I have no hesitation in holding that the second contemnor aided and abetted the first contemnor in breaching the injunction.

In mitigation, Dato' Kayveas tendered his client's apology to the court and pleaded that his client was caught between a family tussle. In passing sentence, I took into consideration the second contemnor's open apology. However, the fact that being a licensed company secretary, he assisted in the breach of the injunction warranted this court in imposing a fine of RM3,000 in default one week imprisonment in respect of each of the two charges.

The third contemnor

The third contemnor threw himself at the mercy of the court. He had accepted that he was wrong and tendered his unreserved apology. Even after his counsel had apologized, he personally tendered an apology. At the first possible opportunity he filed an affidavit (encl 77) apologising to the court for his conduct. In the circumstances, I fined Mr Murthi RM5,000 in default one week imprisonment.

Order accordingly.

Reported by Loo Lai Mee